

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CARL ALONZO BROOKS,

Plaintiff,

v.

CHRISTINE GREGOIRE, JAY INSLEE,  
ROBIN ARNOLD-WILLIAMS, STEPHEN  
SINCLAIR, BARNARD WARNER,

Defendants.

No. C12-6010 BHS/KLS

**REPORT AND RECOMMENDATION**  
**Noted For: December 21, 2012**

Plaintiff Carl Alonzo Brooks, who is currently incarcerated at the Washington State Penitentiary (WSP), has filed an application to proceed *in forma pauperis* (IFP) with a civil rights action brought under 42 U.S.C. 1983. ECF Nos. 1, 1-2. The Court recommends DENYING the IFP application based on the three-strikes rule of 28 U.S.C. 1915(g), and directing Plaintiff to pay the \$350.00 filing fee in order to proceed with his complaint.

**DISCUSSION**

A prisoner may not proceed IFP in a civil action if he or she has, on three or more prior occasions, brought civil actions that were dismissed for failure to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

In his complaint, Plaintiff notes that he has filed seven federal civil rights actions: (1) No. C11-5247 RBL/JRC (Feb. 2011, Tacoma); (2) C11-5152 RBJ/JRC (May 2011, Tacoma); (3) CS-00-432-EFS (Dec. 2000, Spokane); (4) C03-5285 RBL/KLS (June 2003, Tacoma); (5) CV-

1 04-018-EFS (Dec. 2004, Spokane); (6) C12-5623 BHS/JRC (July 2012, Tacoma); (7) C12-5583  
2 RJB/JRC (May 2012, Tacoma). He claims that all were “dismissed for failure to state a claim;  
3 however, Brooks still only has two strikes for In Forma Pauperis purposes.” ECF No. 1-1.

4       However, the Court’s records reflect that at least three of these cases were specifically  
5 determined to be “strikes” pursuant to § 1915(g): (1) *Brooks v. Washington State*, C03-5285  
6 (W.D. Wash., dismissed September 9, 2003) (referring to 1915(g)); (2) *Brooks v. Brooks v.*  
7 *Indeterminate Sentence Review Board*, C11-5152 (W.D. Wash., dismissed April 11, 2011)  
8 (referring to 1915(g)); and (3) *Brooks v. Indeterminate Sentence Review Board*, C-11-5247  
9 (W.D. Wash., dismissed May 11, 2011) (referring to 1915(g)). *See also*, Reports and  
10 Recommendations in Case No. C-11-5152 RJB/JRC (ECF No. 9) and C-11-5247 RBL/JRC  
11 (ECF No. 6), listing Plaintiff’s prior actions and concluding that Plaintiff’s continued attempts to  
12 challenge his current confinement are an abuse of the judicial process, irresponsible, and  
13 frivolous.

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16       Plaintiff has at least three strikes under § 1915(g) and may not proceed unless he can  
17 show that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g); *see*  
18 *Andrews v. King*, 398 F.3d 1113, 1120 (9th Cir. 2005) (holding that once the prisoner has been  
19 placed on notice by the district court of potential disqualification for IFP status under § 1915(g),  
20 “the prisoner bears the ultimate burden of persuading the court that § 1915(g) does not preclude  
21 IFP status”).

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23       Plaintiff alleges that Defendants Christine Gregoire (Washington Governor), Jay Inslee  
24 (Washington Governor-Elect), Robin Arnold-Williams (Secretary of the Department of Social  
25 Health Service), Stephen Sinclair (Superintendent of WSP), and Barnard Warner (Secretary of  
26 the Department of Corrections), have “conspired to breach his valid May 19, 1978 king county

1 superior court Contract, that is, Warrant of Commitment...”. ECF No. 1-2, at 2. Plaintiff seeks  
2 \$320,640.00 in compensatory damages; \$10,412,800.00 in punitive damages; a declaration that  
3 his Warrant of Commitment entitles him to “8 hours per day times five days a week leaves of  
4 absences for the duration of [his] ...term of confinement”; injunctive relief, attorney fees, and  
5 costs. ECF No. 1-2, at 3.

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7 The Court recommends that Plaintiff’s IFP application be denied because it finds that  
8 Plaintiff has not shown that he is under imminent danger of serious physical injury.

9 In addition, before a § 1983 plaintiff may recover damages for an alleged unconstitutional  
10 conviction or imprisonment, or for other harm caused by actions whose unlawfulness would  
11 render a conviction or sentence invalid, he must prove that the conviction or sentence has been  
12 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal  
13 authorized to make such determination, or called into question by a federal court’s issuance of a  
14 writ of habeas corpus, 28 U.S.C. § 2254. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

### 16 CONCLUSION

17 Plaintiff’s application to proceed IFP (ECF No. 1) should be **DENIED** based on the  
18 three-strikes rule of 28 U.S.C. 1915(g), and Plaintiff should be directed to pay the \$350.00 filing  
19 fee in order to proceed with his complaint.

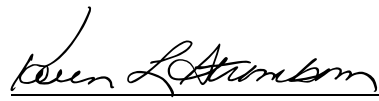
20 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
21 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
22 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
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1 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the  
2 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on  
3 **December 21, 2012**, as noted in the caption.  
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5 **DATED** this 3rd day of December, 2012.  
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9 Karen L. Strombom  
10 United States Magistrate Judge  
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